



Remediation and Redevelopment Division

Michigan Department of Environmental Quality

Notice of Corrective Action Part 213.doc
04/17/2013

NOTICE OF CORRECTIVE ACTION PART 213

This document provides instruction on the use of a Notice of Corrective Action (Notice) to comply with Section 21310a(1) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.*, when the corrective action at a site results in a final remedy that relies on nonresidential cleanup criteria and no other restriction is necessary to prevent exposure to regulated substances. This document and attached model document are provided to the public as preliminary guidance as to the content, format, and terms of this Notice and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Approval and consent of the property owner(s) must be obtained prior to recording with the Register of Deeds. A copy of the Notice and proof of recording must be submitted with the Closure Report (EQP3843) to the appropriate Michigan Department of Environmental Quality (MDEQ) District Office at the address listed in form EQP4410. The recording requirements for instruments filed with Michigan County Register of Deeds offices are contained in Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), MCL 565.201. Act 103 is available at: <http://legislature.mi.gov/doc.aspx?mcl-act-103-of-1937>.

Please contact Mr. Kevin Schrems, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), MDEQ, at schremsk@michigan.gov or 517-284-5149 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

The lettered instructions below explain what information should be inserted into the corresponding blanks shown on the Model Notice of Corrective Action. Drafting notes and insertion directions appear as ***bold italicized font***.

- A. MDEQ Reference No: NCA-RRD-213-[year]-[number]. ***This Reference Number ensures the protectiveness, enforcement, and tracking of institutional controls. All institutional control Reference Numbers assigned shall be predominantly displayed on the first page. The MDEQ Reference Number can be obtained from Mr. Nick Ekel, RRD, MDEQ, at ekeln@michigan.gov or 517-284-5090; or you may call the RRD main number at 517-284-5087.***
- B. ***Enter the name of the county where the Property is located.***
- C. ***Enter the address location of the Property, including city or township and county.***
- D. ***Select the appropriate option based upon the proposed restricted area:***

OPTION 1: To be used if the entire Property is subject to the land use restriction provided in this NCA. Note: A mortgage survey of the Property may be used for this purpose if one is already available. Insert the following:

Exhibit 3 (Survey of the Property) provides a survey of the Property that is subject to the land use restriction specified in this Notice.

OPTION 2: To be used if not all of the Property is subject to the land use restriction provided in this NCA. Note: In this case, a mortgage survey is not appropriate, and a survey and legal description for both the Property and the specific areas of the Property to be restricted is required. Insert the following:

Exhibit 3 (Survey of the Property and Limits of Land Use Restriction), provides a survey and legal description of the Property, and an additional survey and legal description that distinguishes the portion of the Property that is subject to the land use restriction specified in this Notice.

- E. ***Enter the Part 213 Site name and Facility ID number.***
- F. ***Insert as appropriate:***
- Final Assessment Report (FAR)
 - Closure Report (CR)
- G. ***Enter the date of the Final Assessment Report (FAR) or the Closure Report (CR).***
- H. ***Enter the name of the owner or operator, as defined by Section 21303 (a) or (b) of the NREPA, that is proposing the FAR or CR and the filing of this Notice of Corrective Action.***
- I. ***Insert a paragraph similar to the following example that briefly describes the nature and extent of the regulated substances released, the affected media, and how restricting the land use will be effective to address unacceptable risks for all relevant pathways:***
- Example:*** Hazardous substances including benzene, toluene, ethyl benzene, xylenes naphthalene, and trimethylbenzenes were released from an underground storage tank resulting in contamination of the Property. Soil and groundwater contamination remains present at levels that do not allow unrestricted use of the Property. Soil and groundwater contamination do not exceed criteria developed for the nonresidential land use category. Restricting the Property land use to uses consistent with the exposure assumptions for the nonresidential cleanup criteria will allow the use to be protective of the public health, safety, welfare and the environment. Any change in land uses would necessitate further evaluation of potential risks to the public health, safety, welfare, and the environment.
- J. ***Enter as appropriate:***
- as Owner of the Property
 - with the express written permission of the Owner of the Property
- K. ***Enter as appropriate:***
- on the Property
 - within the portions of the Property designated in Exhibit 3 (Survey of the Property and Limits of Land Use Restriction) as ***[insert designation]***.
- L. ***If the local zoning ordinance allows for residential uses within the Property's current zoning, insert the following:***

At the time of recording of this Notice, the **[insert name of local zoning authority and zoning code designation]** zoning code designation allowed for the following residential uses that are not compatible with the nonresidential cleanup criteria and are therefore prohibited by this Notice: **[list prohibited uses]**.

M. Insert one or more of the following acknowledgements or other acknowledgements, as required by Property conditions.

1) Surface and subsurface soils found on the Property must be managed in accordance with the requirements of Sections 21304b and 21304c of the NREPA, and other applicable state and federal laws.

2) Contaminated groundwater is migrating under the Property from an off-site source and that use of the contaminated groundwater for any domestic or industrial purpose may pose an unacceptable risk to the public health, safety, welfare, and the environment.

N. Enter the current day of the month.

O. Enter the current month.

P. Enter the current year.

Q. Enter the state where the document is signed.

R. Enter the county where the document is signed.

S. Enter the appropriate form of acknowledgement from the following:

OPTION 1: For an individual:

The foregoing instrument was acknowledged before me this **[date]**, by **[name of individual]**.

OPTION 2: For a corporation:

The foregoing instrument was acknowledged before me this **[date]**, by **[name of officer or agent, title of officer or agent]** of **[name of corporation]**, a **[state or place of incorporation]**, on behalf of the corporation.

OPTION 3: For a partnership:

The foregoing instrument was acknowledged before me this **[date]**, by **[name of partnership or agent]**, partner **[or agent]** on behalf of **[name of partnership]**, a partnership.

OPTION 4: For an individual acting as principal by an attorney in fact (power of attorney):

The foregoing instrument was acknowledged before me this **[date]**, by **[name of attorney in fact]** as attorney in fact on behalf of **[name of principal]**.

T. Stamp name of the Notary Public.

U. Enter the name of the person preparing the document

- V. *Enter the address to return the document to once recorded with the Register of Deeds.*

EXHIBIT 1: CONSENT OF OWNER ATTACHMENT:

This form is only necessary if the current Property owner and the person signing the Notice are not the same person. This document provides the express written permission of the current Property owner for recording.

- W. *Enter the name of the current Property owner.*
- X. *Enter the name of the person proposing to file the Notice.*

EXHIBIT 2: LEGAL DESCRIPTION OF PROPERTY:

This exhibit must provide the legal description of the Property, including parcel identification number(s) of the Property.

EXHIBIT 3: SURVEY OF PROPERTY OR SURVEY OF THE PROPERTY AND LIMITS OF LAND USE RESTRICTION.

This exhibit must be titled as appropriate for the restricted area.

The survey must identify, clearly delineate, and graphically depict the spatial extent of the restricted area in relation to the Property boundaries. The survey must also provide an additional legal description for any distinct restricted area of the Property, if not, all of the Property is subject to the land use restriction.

To provide for a reliable and consistent standard of quality for surveys, all surveys shall be conducted by a licensed professional surveyor employed to provide land surveying services consistent with R339.17403 of Part 4, Standards of Practice and Professional Conduct, promulgated pursuant to Section 308 of the Occupational Code Act, 1980 PA 299, as amended, MCL 339.308.

At a minimum the survey shall include all the following as adopted from R339.17403:

- A clear concise description of the Property surveyed by bearings and distances, commencing with some corner marked and established in the United States system of public land surveys, or reestablished in accordance with accepted methods.*
- The graphical and numerical scale used.*
- A north arrow.*
- Identification of all government corners and related witnesses.*
- A statement of the manner of bearing determination.*
- The ratio of closure of latitudes and departures, which shall be within limits accepted by the profession of land surveying.*

EXHIBIT 4: DESCRIPTION OF ALLOWABLE USES

- Y. ***This exhibit is only necessary when the Property is restricted to nonresidential or site-specific land uses. It must be consistent with the zoning of the Property (Do not include zoning code as part of this description) and with the generic exposure assumptions utilized in the FAR or CR under Section 21304a(2) of the NREPA, or the alternative exposure assumptions used to derive site-specific criteria if approved in the FAR or CR.***

OPTION 1: Insert the following paragraph exactly as provided if the Property is restricted to the nonresidential land use category:

Nonresidential Land Use: This land use is characterized by any use which is not residential in nature and is primarily characterized by industrial and commercial uses. Industrial uses typically involve manufacturing operations engaged in processing and manufacturing of materials or products. Other examples of industrial uses are utility companies, industrial research and development, and petroleum bulk storage. Commercial uses include any business or income-producing use such as commercial warehouses, lumber yards, retail gas stations, auto dealerships and service stations, as well as office buildings, banks, and medical/dental offices (not including hospitals). Commercial uses also include retail businesses whose principal activity is the sale of food or merchandise within an enclosed building and personal service establishments which perform services indoors such as health clubs, barber/beauty salons, photographic studios, etc.

Any residential use is specifically prohibited from the nonresidential land use category. This would include the primary use of the Property for human habitation and includes structures such as single family dwellings, multiple family structures, mobile homes, condominiums, and apartment buildings. Residential use is also characterized by any use which is intended to house, educate, or provide care for children, the elderly, the infirm, or other sensitive populations, and therefore could include day care centers, educational facilities, hospitals, elder care facilities, and nursing homes. The use of any accessory building or portion of an existing building as a dwelling unit permitted for a proprietor or storekeeper and their families, located in the same building as their place of occupation, or for a watchman or caretaker is also prohibited. Any authority that allows for residential use of the Property as a legal non-conforming is also restricted per the prohibitions contained in this Notice.

OPTION 2: If the Property is restricted to the site-specific land use category, insert a paragraph that describes those uses that are consistent with the assumptions used to develop the site-specific criteria.

--END OF GUIDANCE AND INSTRUCTIONS--

NOTICE OF CORRECTIVE ACTION MODEL

NOTICE OF CORRECTIVE ACTION FOR NONRESIDENTIAL LAND USE

MDEQ Reference No: ____ (A) ____

This Notice of Corrective Action (Notice) has been recorded with the ____ (B) ____ County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting uses of the Property located at ____ (C) ____ and legally described in the attached Exhibit 2 (Legal Description of the Property) that are inconsistent with the environmental conditions of the Property. ____ (D) ____

The Property is associated with ____ (E) ____ for which a ____ (F) ____ was completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the ____ (F) ____ dated ____ (G) _____. A copy of the ____ (F) ____ is available from the Michigan Department of Environmental Quality (MDEQ), Remediation and Redevelopment Division District Office.

The Property described contains regulated substances in excess of the concentrations developed as the unrestricted residential cleanup criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the requirements of Section 21304c of the NREPA.

The ____ (F) ____ required the recording of this Notice with the ____ (B) ____ County Register of Deeds to assure that the use of the Property is consistent with the exposure assumptions used to develop the nonresidential cleanup criteria employed by the ____ (F) ____ pursuant to Section 21304a(2) of the NREPA, and the RBCA process. The restriction contained in this Notice are based upon information available at the time the ____ (F) ____ was implemented by ____ (H) _____. Failure of the corrective action to achieve and maintain the cleanup criteria and requirements specified in the ____ (F) ____; future changes in the environmental condition of the Property; changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the ____ (F) ____; or use of the Property in a manner inconsistent with the restriction described below may result in this Notice not being protective of public health, safety, and welfare, and the environment. The adequacy of the corrective action undertaken pursuant to the ____ (F) ____ may not have been reviewed by the MDEQ

Definitions

For the purposes of this Notice, the following definitions shall apply:

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then-current title holder of all or any portion of the Property.

"Property" means the real property as described in Exhibit 2 (Legal Description of the Property) of this Notice that is subject to the restrictions, terms, and conditions described herein.

"RBCA" means the American society for testing and materials (ASTM) document entitled standard guide for risk-based corrective action applied at petroleum release sites, designation E 1739-95 (reapproved 2010) E1; standard guide for risk-based corrective action designation E 2081-00 (reapproved 2010) E1; and standard guide for development of conceptual site models and remediation strategies for light nonaqueous-phase liquids released to the subsurface designation E 2531-06 E1, all of which are hereby incorporated by reference.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA and Part 213 of the NREPA, shall have the same meaning in this document as in Parts 3 and 213 as of the date this Notice is filed.

Summary of Environmental Conditions and Corrective Action.

____(I)____

NOW THEREFORE,

1. Declaration of Land Use Restriction.

In accordance with the ____ (F) ____, ____ (H) ____, ____ (J) ____, covenants that the Property is subject to the following restriction:

- a. Prohibited Land Uses. The Owner shall prohibit all uses of ____ (K) ____ that are not compatible with or are inconsistent with the assumptions and basis for the nonresidential cleanup criteria established pursuant to Section 21304a(2) of the NREPA. Uses that are compatible with the nonresidential cleanup criteria are generally described in Exhibit 4 (Description of Allowable Uses). ____ (L) ____.
Cleanup criteria for land use-based corrective actions are located in the Government Documents Section of the Library of Michigan.

2. Owner Acknowledgements. The Owner also acknowledges that:

- a. If there is any proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare, and to the environment, and the MDEQ must be contacted regarding any proposed change in the land use. Pursuant to Section 21323a(4)(d)(ii) of the NREPA, the Owner would be responsible for any corrective actions necessary to comply with Part 213 for any proposed change in land use.

b. ____ (M) ____

3. MDEQ Access. The Owner grants to the MDEQ and ____ (H) ____, and their designated representatives, the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the ____ (F) ____, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the ____ (F) _____. The right of access provided to ____ (H) ____ above is not required under Part 213 for the corrective action to be considered approved. This provision was agreed to by the Owner at the time the Notice was recorded. Accordingly, the MDEQ will not enforce the Owner's obligation to provide access to ____ (H) _____.

4. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the ____ (F) ____ and this Notice. A copy of this Notice shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 21310a(2)(c) of the NREPA.

5. Audits Pursuant to Section 21315 of the NREPA. This Notice is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in a finding by the MDEQ that this Notice is not protective of the public health, safety, and welfare, and the environment.

6. Term of Notice. This Notice shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Notice shall continue in effect until it is determined that the regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. Improper modification or rescission of any restriction necessary to prevent unacceptable exposure to regulated substances may result in the need to perform additional corrective actions to comply with Section 21304c of the NREPA.

7. Enforcement of Notice. The State of Michigan, through the MDEQ, and ____ (H) ____ may individually enforce the restriction set forth in this Notice by legal action in a court of competent jurisdiction.

8. Severability. If any provision of this Notice is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Notice, which shall continue unimpaired and in full force and effect.

9. Authority to Execute Notice. The undersigned person executing this Notice is the Owner, or has the express written permission of the Owner, and certifies that he or she is duly authorized to execute and record this Notice.

IN WITNESS WHEREOF, ____ (H) ____ has caused this Notice, ____ (A) ____, to be executed on this ____ (N) ____ day of ____ (O) ____, 20 ____ (P) ____.

____ (H) ____

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ____ (Q) ____
COUNTY OF ____ (R) ____

____ (S) ____

Notary Public Signature
____ (T) ____

Prepared by:
____ (U) ____

When recorded return to:
____ (V) ____

EXHIBIT 1

CONSENT OF OWNER

I, ____ (W) ____, the current and legal Owner of the Property, do hereby consent to the recording of this Notice, ____ (A) ____, and authorize ____ (X) ____ to file the Notice with the ____ (B) ____ County Register of Deeds for recording.

____ (W) ____

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ____ (Q) ____
COUNTY OF ____ (R) ____

____ (S) ____

Notary Public Signature
____ (T) ____

EXHIBIT 2

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT 3

SURVEY OF THE PROPERTY

OR

**SURVEY OF THE PROPERTY
AND LIMITS OF LAND USE RESTRICTION**

EXHIBIT 4

DESCRIPTION OF ALLOWABLE USES

Insert appropriate option from instruction ____ (Y) ____